

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
UNITED STATES OF AMERICA, : Docket #14cr810
Plaintiff, :
- against - :
MOSHE MIRILISHVILI, et al. : New York, New York
December 11, 2014
Defendants. :
----- :

PROCEEDINGS BEFORE
THE HONORABLE KEVIN N. FOX,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For the United States UNITED STATES ATTORNEYS OFFICE
Of America: SOUTHERN DISTRICT OF New York City
 BY: EDWARD DISKANT, ESQ.
 One Saint Andrew's Plaza
 New York, New York 10007

For Mirilishvili: MIEDEL & MYSЛИWIEC
 BY: FLORIAN MIEDEL, ESQ.
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Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

APPEARANCES CONTINUED:

For Middleton: PATRICK JOYCE, ESQ.
70 Lafayette Street
New York, New York 10013

For Leonard: IRVING COHEN, ESQ.
233 Broadway, Suite 2701
New York, New York 10279

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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE CLERK: U.S. v. Moshe Mirilishvili, Damon
3 Leonard, and Carolyn Middleton. Counsel, please state your
4 name for the record starting with the Government.

5 MS. EDWARD DISKANT: Good afternoon, Your Honor,
6 Edward Diskant for the Government. With me at counsel
7 table is Danielle Craig, a paralegal with our office, and
8 Lieutenant Victor Lebraun (phonetic) with the New York City
9 Police Department.

10 THE COURT: Good afternoon.

11 MR. FLORIAN MIEDEL: Good afternoon, Your Honor.
12 For Dr. Mirilishvili, Florian Miedel.

13 THE COURT: Good afternoon.

14 MR. PATRICK JOYCE: Good afternoon, Your Honor,
15 on behalf of Carolyn Middleton, Patrick Joyce.

16 THE COURT: Good afternoon.

17 MR. IRVING COHEN: On behalf of Leonard, Irving
18 Cohen.

19 THE COURT: Good afternoon. Beginning with Mr.
20 Leonard, what is the date and time of arrest please?

21 MR. DISKANT: Today at approximately 10 a.m.

22 THE COURT: Thank you. Date and time of arrest
23 for Miss Middleton please.

24 MR. DISKANT: The same, Your Honor, today at
25 approximately 10 a.m.

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2 THE COURT: Thank you. And Mr. Dr. Mirilishvili.

3 MR. DISKANT: Today at approximately 7 a.m.

4 THE COURT: Thank you. For each of the
5 defendants, the purpose of the proceeding is to advise each
6 of you of certain rights that you have, to inform each of
7 you of the charge made against you, consider whether
8 counsel should be appointed for any of you, and to
9 determine under what conditions each of you might be
10 released. Do each of you understand?

11 DEFENDANT: Yes.

12 MS. MIDDLETON: Yes.

13 THE COURT: Each of you has the right to be
14 released either conditionally or unconditionally pending
15 trial unless I find there are no conditions that would
16 reasonably assure your presence in court and the safety of
17 the community. Each of you has a right to be represented
18 by counsel during all court proceedings and during all
19 questioning by authorities. If you're not able to retain
20 counsel, the Court will appoint counsel to represent you.

21 In that connection, I have before me documents
22 labeled financial affidavit. Mr. Leonard, sir, do you
23 recognize this document?

24 MR. LEONARD: Yes, sir.

25 THE COURT: Would you raise your right hand? Do

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2 you swear or affirm that the statements contained in this
3 financial affidavit are true statements and that your true
4 signature appears on the bottom of the affidavit?

5 MR. LEONARD: Yes.

6 THE COURT: Thank you. I'm going to appoint Mr.
7 Cohen to represent you. The information you've provided
8 through the affidavit convinces me that you're without the
9 means to retain counsel. If you have made false statements
10 through the affidavit, you may expose yourself to a new
11 charge in connection with the false statements. If your
12 financial circumstances change and you're able to retain
13 counsel, you should advise the Court of your changed
14 circumstance.

15 Miss Middleton, let me also show you this document
16 labeled financial affidavit. Do you recognize it?

17 MS. MIDDLETON: Yes.

18 THE COURT: Would you raise your right hand
19 please?

20 MS. MIDDLETON: Yes.

21 THE COURT: Do you swear or affirm that the
22 statements contained in this financial affidavit are true
23 statements and that your true signature appears at the
24 bottom of the affidavit?

25 MS. MIDDLETON: Yes.

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2 THE COURT: Thank you. I'm going to appoint Mr.
3 Joyce to represent you. The information you've provided
4 through the affidavit persuades me that you're without the
5 means to retain counsel. If your financial circumstances
6 change and you're able to retain counsel, you should advise
7 the Court of that. And if you have made false statements
8 through the affidavit, you may expose yourself to a new
9 charge in connection with those false statements.

10 Dr. Mirilishvili, you're here with retained
11 counsel, is that correct?

12 DR. MIRILISHVILI: Yes, sir.

13 THE COURT: Should your financial circumstance
14 change and you're no longer able to retain counsel, you
15 should advise the Court of that so that counsel can be
16 appointed for you. Mr.

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19 Miss Middleton, let me also show you this document
20 labeled financial affidavit. Do you recognize it?

21 MS. MIDDLETON: Yes.

22 THE COURT: Would you raise your right hand
23 please?

24 MS. MIDDLETON: Yes.

25 THE COURT: Each of you has been named in an

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2 indictment returned by a grand jury in this judicial
3 district.

4 THE CLERK: Mr. Mirilishvili, have you seen a
5 copy of this indictment?

6 DR. MIRILISHVILI: Yes.

7 THE CLERK: Have you discussed it with your
8 attorney?

9 DR. MIRILISHVILI: Yes.

10 THE CLERK: Would you like me to read the
11 indictment to you?

12 DR. MIRILISHVILI: No.

13 THE CLERK: How do you plead?

14 DR. MIRILISHVILI: Not guilty.

15 THE CLERK: Mr. Leonard, have you seen a copy of
16 this indictment?

17 MR. LEONARD: Yes.

18 THE CLERK: Have you discussed it with your
19 attorney?

20 MR. LEONARD: Yes.

21 THE CLERK: Would you like me to read the
22 indictment to you?

23 MR. LEONARD: No, sir.

24 THE CLERK: How do you plead?

25 MR. LEONARD: Not guilty.

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2 THE CLERK: Miss Middleton, have you seen a copy
3 of this indictment?

4 MS. MIDDLETON: Yes.

5 THE CLERK: Have you discussed it with your
6 attorney?

7 MS. MIDDLETON: Yes.

8 THE CLERK: Would you like me to read the
9 indictment to you?

10 MS. MIDDLETON: No thank you.

11 THE CLERK: How do you plead?

12 MS. MIDDLETON: Not guilty.

13 THE COURT: Thank you. Is there a date for a
14 conference with the assigned district judge?

15 MR. DISKANT: Yes, Your Honor, Judge McMahon has
16 set an initial conference for January 28, 2015 at 2 p.m.

17 THE COURT: Thank you. Let's turn to the issue
18 of bail. Have the parties received copies of the
19 respective Pretrial Services report?

20 ATTORNEY: Yes, Judge.

21 MR. DISKANT: Yes, Your Honor.

22 ATTORNEY: Yes.

23 THE COURT: Beginning with Mr. Leonard, what is
24 the Government's position on bail?

25 MR. DISKANT: Your Honor, with respect to Mr.

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2 Leonard, I have what I understand to be a joint proposed
3 package for the Court's consideration. The package is a
4 \$200,000 personal recognizance bond secured by \$5,000 in
5 cash, the signatures of two financially responsible people,
6 travel restricted to the Southern and Eastern Districts of
7 New York, and all other routine conditions as recommended
8 by Pretrial. And the Government is amenable to the
9 defendant's release today on his own signature with a week
10 to meet all remaining conditions.

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THE COURT: Mr. Cohen, is that recitation in
12 harmony with your recollection of your discussion with the
13 Government on bail?

14

MR. COHEN: Yes, it is.

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THE COURT: In addition to the proposal made by
16 the parties which I shall adopt, I'm going to direct that
17 Mr. Leonard submit to a urinalysis administered by the
18 Pretrial Services office. If it is positive for the
19 presence of a controlled substance, you'll be subject to
20 additional testing and treatment at the discretion of the
21 Pretrial Services office.

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(pause in proceeding)

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THE COURT: Following are the bail conditions for
24 Mr. Leonard: a \$200,000 personal recognizance bond, bond
25 to be cosigned by two financially responsible persons.

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2 Bond should be secured by \$5,000 cash. His travel's
3 restricted to the Southern and Eastern Districts of New
4 York. He must surrender any travel documents he may
5 possess and not seek or obtain any new replacement travel
6 documents while the criminal action is pending.

7 And he's subject to regular Pretrial supervision.
8 Must submit to urine analysis, administered by the Pretrial
9 Services office. If the analysis is positive for a
10 controlled substance, then at the discretion of the
11 Pretrial Services office, he's subject to additional
12 testing for drug and drug treatment.

13 Sir, you'll be released today after you execute
14 the bond. You must satisfy all the bail conditions I've
15 imposed by the 18th day of December 2014. You must appear
16 in court whenever you are directed to do so. If you fail
17 to do so, you and any cosigners on your bond will be liable
18 to the Government for the full amount of the bond. Any
19 cash posted in support of the bond will be forfeited to the
20 Government, a warrant may issue for your arrest, and you
21 may expose yourself to the new charge in connection with
22 your failure to appear in court which would have a penalty
23 separate and apart from any penalty that might be imposed
24 upon you should you be found guilty of the offense outlined
25 in the indictment. Do you understand, sir?

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2 MR. LEONARD: Yes, sir.

3 THE COURT: Is there anything else that we need
4 to address with respect to Mr. Leonard?

5 MR. DISKANT: Yes, Your Honor, the Government
6 seeks an exclusion of time between today's date and January
7 28. The purpose of the exclusion is so as to permit the
8 Government (indiscernible) producing discovery and permit
9 defense counsel to review that discovery with their
10 clients.

11 MR. COHEN: No objection.

12 THE COURT: The application is granted. Anything
13 else from either party?

14 MR. DISKANT: No, Your Honor.

15 MR. COHEN: No, Your Honor. May I be excused
16 now?

17 THE COURT: Yes.

18 MR. COHEN: Thank you.

19 THE COURT: Let's move to Miss Middleton. What
20 is the Government's position on bail with respect to her?

21 MR. DISKANT: Your Honor, I also have what I
22 understand to be a joint proposed package for the Court's
23 consideration. With respect to Miss Middleton, the parties
24 would propose a \$100,000 personal recognizance bond secured
25 by the signature of her daughter and one additional

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2 financially responsible person. All other standard
3 conditions as recommended by Pretrial Services. The
4 defendant is to be released on her own signature tonight
5 with two weeks to meet all remaining conditions.

6 THE COURT: Well, two weeks from now would bring
7 us to a date on which the court is closed, the 25th day of
8 the month.

9 MR. DISKANT: Then we'd ask for - I guess the
10 26th is a court holiday as well. So the following Monday
11 then, the 28th I believe or 29th.

12 THE COURT: 29th day of December is the following
13 Monday.

14 MR. DISKANT: Thank you. And I should note with
15 respect to this defendant, I think it is likely covered by
16 Pretrial's recommendation with respect to illicit
17 substances, but illicit substances from the Government's
18 perspective would include oxycodone. The Government would
19 request that the defendant not be permitted to fill any
20 oxycodone prescriptions in her own name without the
21 approval of Pretrial Services.

22 THE COURT: What is the defendant's position on
23 that application?

24 MR. JOYCE: Your Honor, we did consent to the
25 package's entirety. I imagine the Pretrial, if Miss

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2 Middleton presents to them legitimate physical needs for
3 any prescription, they will, I can't imagine that they
4 would withhold their approval. If they did, I would come
5 to the Court. I have no problem. I don't think they're
6 saying she can't fill it, or she can't fill any
7 prescriptions; just that she can't do it without the
8 approval of Pretrial. So I have no objection to that.

9 THE COURT: I'm not going to adopt that portion
10 of the recommendation made by the parties. Based on all
11 the information provided in the Pretrial Services report,
12 it seems to me that if a physician who's treating Miss
13 Middleton determines that she needs a particular
14 medication, she should have it without the hiatus or
15 waiting notification to the Pretrial Services office and
16 authorization from that office. Based upon the totality of
17 the information in the Pretrial Services report, I don't
18 want to do anything that would interdict her obtaining
19 appropriate medical services that she might need.

20 MR. DISKANT: Your Honor, respectfully, I just
21 want to point out the nature of this case is that there are
22 plenty of doctors out there --

23 THE COURT: I know what the nature of the case
24 is. I've read the materials.

25 MR. DISKANT: Okay, the Government would view it

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2 as - that it's fine. If the defendant continues to fill
3 prescriptions written by any of the doctors identified in
4 the scheme, the Government would view it as a violation and
5 would reserve the right to take that up with Judge McMahon.

6 THE COURT: Following are the bail conditions for
7 Miss Middleton: a \$100,000 personal recognizance bond,
8 bond to be cosigned by two financially responsible persons,
9 one of whom must be Miss Middleton's daughter. Her
10 travel's restricted to Southern and Eastern Districts of
11 New York. She must surrender any travel documents she may
12 possess and not seek or obtain any new or replacement
13 travel documents while the criminal action's pending.
14 She'll be subject to regular Pretrial supervision.

15 She must submit to a urine analysis administered
16 by the Pretrial Services office. If the analysis is
17 positive for a controlled substance other than prescribed
18 medication, she'll be subject to additional drug testing
19 and drug treatment as deemed appropriate by the Pretrial
20 Services office.

21 Miss Middleton, you'll be released today after you
22 execute the bond. You must satisfy all the bail conditions
23 by the 29th day of December 2014. You must appear in court
24 whenever you are directed to do so. If you fail to do so,
25 you and any cosigners on your bond will be liable to the

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2 Government for the full amount of the bond, a warrant may
3 issue for your arrest, and you may expose yourself to a new
4 charge in connection with your failure to appear in court
5 which would have a penalty that is separate and apart from
6 any penalty that might be imposed upon you should you be
7 found guilty of the offenses outlined in the indictment.

8 Do you understand?

9 MS. MIDDLETON: Yes.

10 THE COURT: Is there anything else that we need
11 to address with respect to Miss Middleton?

12 MR. DISKANT: No, Your Honor, thank you. Time
13 has already been excluded in the case and the exclusion
14 will apply to her as well.

15 THE COURT: I'm sorry, I didn't hear all that you
16 said.

17 MR. DISKANT: I said time has already been
18 excluded until the 28th, which will apply to her as well.

19 THE COURT: Very well.

20 MR. JOYCE: Your Honor, I just have one question.

21 THE COURT: Yes.

22 MR. JOYCE: The Government did mention that they
23 will be providing discovery. I don't know whether or not
24 they've given a date or a thought process about when
25 discovery will be coming.

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MR. DISKANT: We can certainly talk about a
discovery schedule.

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THE COURT: Anything else from either party with
respect to Miss Middleton?

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MR. DISKANT: No, Your Honor.

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THE COURT: All right, Thank you.

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[appears that section of recording is missing at 20:51 into
the recording]

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THE COURT: Any cosigners on your bond will be
liable to the Government for the full amount of the bond,
any money posted in support of the bond be forfeited to
Government, a warrant may issue for your arrest, and you
may expose yourself to a new charge in connection with your
failure to appear in court which would have a penalty that
is independent of any penalty that might be imposed upon
you should you be found guilty of the offense outlined in
the indictment. Do you understand, sir? I did not hear
your answer.

DR. MIRILISHVILI: Yes.

THE COURT: Is there anything else that we need
to address?

MR. DISKANT: Your Honor, I apologize if I missed
it. We would ask, consistent with the recommendation of
Pretrial, that there be a condition of release that he

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2 refrain from writing prescriptions for controlled
3 substances.

4 THE COURT: What is the defendant's position on
5 that request?

6 MR. MIEDEL: Well, Your Honor, the doctor is a
7 pain management doctor, and part of his practice is to
8 write prescriptions for pain medication. It's not his
9 entire practice. There is physical therapy, there are a
10 number of other things that are involved. But prescribing
11 pain medication is something that is part of his,
12 significant part of his practice, if warranted. And if he
13 cannot do that, then I think he will not be able to be
14 employed.

15 THE COURT: Well, the request was not that he
16 refrain from prescribing all pain medication, only
17 particular pain medication.

18 MR. MIEDEL: Well, right, I don't honestly know
19 what - there may be other pain medication is possibly
20 prescribed, but I assume it's all narcotic-based pain
21 medication. So they could probably certainly find some
22 other medication that may be possible to do if it's
23 specifically asking oxycodone. I think the more, perhaps
24 the more appropriate restriction would be obviously to
25 prescribe pain medication only if all the measures of

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2 vetting the patient are met which is to ensure that the
3 patient is properly referred from a identifiable primary
4 physician and has with him or her a requisite documentation
5 such as MRI's or other test results which indicate that
6 perhaps pain management through medication is warranted.

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THE COURT: Has the Drug Enforcement
Administration barred the defendant from prescribing
controlled substances?

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MR. DISKANT: That will be the next step if Your
Honor does not set that as a condition of release. I was
hopeful that we could handle it as a condition of the
defendant's release, but if not, the DEA will begin
immediately administrative proceedings to revoke his
license.

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MR. MIEDEL: Your Honor, also just while we're
talking. If there was a condition about the firearms, I
just want to clarify that as the Pretrial Services report
indicated, there was an application in 1991 for a firearm.
That application was never satisfied, and my client has no
firearms, has never possessed firearms.

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THE COURT: I can appreciate the request made by
the Government and the recommendation made by the Pretrial
Services office. I pause only because the defendant is
allowed to practice his profession, and I'm not a physician

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2 and I can't say that he can be barred from aiding patients
3 who might come to him seeking treatment who might
4 legitimately need a prescription for a particular
5 medication and that he would be prohibited from providing
6 the patient appropriate care because someone who's not
7 trained at medicine has determined that he should not be do
8 so and thereby might harm a patient of his.

9 I appreciate that the Government believes that he
10 has a medical practice that consists, if the information in
11 the indictment and that urged upon me at this proceeding is
12 to be believed, is dedicated to writing prescriptions that
13 don't need to be written for people who legitimately need a
14 particular medication. But I'm not really in a position, I
15 don't believe, to act prudently to prevent him, if he's
16 treating patients who legitimately need a particular
17 medication and that is the only medication that in his
18 professional judgment, and maybe others who are trained at
19 medicine, believe is the appropriate medication, that he
20 should be prohibited from prescribing it.

21 Now, he's obviously aware and will have
22 discussions with his counsel about the substance of the
23 indictment and how he proceeds going forward given the
24 level of scrutiny that is now focused on him. So because
25 of my concern, as I've just expressed, I'm going to deny

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2 the request that he be barred from prescribing oxycodone
3 medication.

4 MR. DISKANT: Your Honor, we'd ask you at least
5 to impose that condition for a period of 24 hours so that
6 we can appeal that determination to Judge McMahon.

7 THE COURT: All right, I'll grant that
8 application. So no prescription for oxycodone should be
9 issued by you, sir, pending the appeal to the assigned
10 district judge from my determination not to bar you from
11 prescribing oxycodone. It's expected that the application
12 will be presented to the assigned district judge within 24
13 hours, and she'll act upon it, entertain the parties and
14 act upon it, I'm hopeful. Is there anything else that we
15 need to address?

16 MR. MIEDEL: Your Honor, just the collateral was
17 150 --

18 THE COURT: One hundred fifty thousand dollars
19 cash or property.

20 MR. MIEDEL: Okay, by the 16th of December,
21 correct?

22 THE COURT: Correct.

23 MR. MIEDEL: Thank you.

24 THE COURT: You're welcome. Good night.

25 [additional recording for 12/11/14 provided by court]

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THE CLERK: U.S. v. Moshe Mirilishvili,

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Mirilishvili, 14cr810 out of wheel C.

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THE COURT: This is assigned to Judge McMahon.

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THE CLERK: And U.S. v. Ryan Thomason out of

wheel A.

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THE COURT: Case is assigned to Judge Crotty.

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THE CLERK: Thank you, sir.

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THE COURT: You're welcome.

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(end of recording)

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(Whereupon the matter is adjourned.)

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C E R T I F I C A T E

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4 I, Carole Ludwig, certify that the foregoing
5 transcript of proceedings in the United States District Court,
6 Southern District of New York, United States of America v.
7 Mirilishvili and Leonard, Docket #14cr810, was prepared using
8 PC-based transcription software and is a true and accurate
9 record of the proceedings.

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Signature _____

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Date: February 22, 2016

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